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JUDICIAL DECISIONS ON PUBLIC LAW

ROBERT E. CUSHMAN

University of Illinois

Appropriations to Sectarian Schools—Constitutionality. Trost v. Manual Training School for Boys (Illinois, February 20, 1918, 118 N. E. 743). The plaintiffs in this case asked for an injunction to restrain the payment of county funds to certain Catholic institutions to which the county courts in accordance with the statutes have committed dependent children. Both Catholics and non-Catholics are sent to the schools; and while all the children are taught the Catholic catechism, only the Catholic children are required to attend the regular Catholic religious services. It was alleged that these appropriations were in violation of the clause of the state constitution forbidding the appropriation of public funds in the aid of sectarian institutions. The court decided that since the amount of money paid by the county to the schools in question for the support of each child was less than the actual cost of maintaining that child at a state institution the appropriations could not be said to be in aid of the sectarian school. The court seems to have been influenced in part by the fact that there were available no other suitable institutions to which these dependent children could be sent and that such schools could be erected and maintained by the county or state only at great expense. The case seems to be in conflict with the earlier Illinois case of County of Cook v. Industrial School for Girls (125 Ill. 540; 18 N. E. 183).

Compulsory Taking of Private Property for Use in Work on Public Roads. Galoway v. State (Tennessee, March 23, 1918, 202 S. W. 76). This case holds that persons who have wagons and teams may be compelled by law to allow their use by the county for work upon the roads for a specified number of days each year. Such compulsory use of property is justified upon the same principle as that which underlies the time-honored custom of compelling the citizen to give his labor directly for the same purpose. Laws which make service upon the roads compulsory have frequently required the citizens to provide

the tools with which to do that work. The law in question is a less drastic exercise of governmental authority than such a law. The long line of cases sustaining the compulsory service acts and culminating with the decision of the United States Supreme Court in the case of Butler v. Perry (240 U. S. 328; 36 Sup. Ct. 258) are, therefore, authorities in support of the statute involved in this case. The property thus taken for use on the roads cannot be said to be taken by the taxing power, nor by the power of eminent domain, but by the police power of the state. That portion of the act, however, which compelled the owners of the teams so commandeered to feed them while they were being so used was held void as a taking of private property for public use without just compensation. The taking of the feed was distinguished from the taking of the horses on the ground that the latter taking was merely temporary and in the nature of a loan which would not work severe hardship, while the feed thus provided was entirely appropriated by the public authorities.

Congressional Districts—Power of Legislature to Reapportion Frequently. People v. Voorhis (New York, February 15, 1918, 119 N. E. 106). In this case the New York court of appeals lays down the interesting rule that when the legislature of a state reapportions the congressional districts of that state after a decennial census it does not thereby exhaust its power or completely discharge its duty. It is under a continuing obligation to keep on redistricting the state as often as the shifting of population may make it necessary or advisable. The state of New York was redistricted in 1911. In 1916 a congressman was elected to represent the seventh district and he resigned in January, 1918. In June, 1917, the legislature redistricted the state, altering the boundaries of the seventh district in the process. The governor issued a call for a special election to fill the vacant seat. Should the election be held in the seventh district as constituted by the apportionment of 1911 or in the new seventh district created by the act of 1917? The court upheld the validity of the last apportionment and declared that the seventh district marked out by the statute of 1911 no longer existed. It was pointed out that when Congress in 1911 called upon the states to create new congressional districts based upon the census of 1910 it used the words "the representatives to the Sixty-Third and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory, and containing as nearly as practicable, an equal number of inhabitants." This shows clearly

that "Congress in its enactment took into consideration the fact that after a state had once been divided into congressional districts, by reason of shifting population, it might become necessary to redistrict it in order fully to comply with the intent and purpose of the act."

The position of the majority of the court was vigorously attacked in two dissenting opinions. It was pointed out that ever since 1842, when Congress first directed the creation of congressional districts based upon the federal census, state legislatures have assumed that such districts were to be changed only when a new census had been taken. This, it was urged, was the clear intention of Congress. To hold that congressional districts must be continuously reshaped to conform to the rapid shifting of population would make necessary the frequent enumeration of the population of the state in order to determine the amount and character of such shifting. It was not the purpose of Congress to lay upon the states any such obligation to take frequent censuses. It was further urged that even if such frequent reapportionments were legitimate they could be made to apply only to the regular elections held after their enactment. Otherwise a man might be elected to Congress only to find himself representing a "migratory" district, or perhaps a district which, by some act of redistribution, had ceased entirely to exist. Such a result is clearly contrary to the intention of Congress.

If the New York court of appeals has correctly interpreted the congressional act governing the decennial reapportionment of congressional districts it would seem highly important that that law be modified to prevent the enormous increase of gerrymandering which the rule in this case would make possible.

Criminal Law—Criminal Syndicalism—Advocacy of Sabotage. State v. Moilen (Minnesota, April 19, 1918, 167 N. W. 345). This case involved the question of the constitutionality of the Minnesota statute of 1917 defining and punishing the crime of "criminal syndicalism." Criminal syndicalism was declared to be the doctrine "which advocates crime, sabotage (this word as used in this bill meaning the malicious damage or injury to the property of an employer by an employee), violence or other unlawful methods of terrorism as a means of accomplishing industrial or political ends." Teaching this doctrine by spoken or written words or attending, instigating or aiding meetings for the purpose of advocating it was made a felony with a maximum penalty of ten years imprisonment, five thousand dollars fine, or both.

The statute was held by the state supreme court to be constitutional. It did not abridge the privileges or immunities of citizens of the United States, since there could be no constitutional right to advocate a doctrine so menacing. It was not a denial of the equal protection of the law in penalizing methods of carrying on industrial struggles alone because it is well established that the problems of labor may properly be treated by special laws without creating arbitrary classifications. Finally, the penalties provided for do not exceed the limits of legislative discretion so as to constitute cruel and unusual punishments.

Elections—Bribery at Presidential Elections. United States v. Bathgate (U. S. Supreme Court, March 4, 1918, 38 Sup. Ct. 269). A conspiracy to bribe voters at a general election at which presidential electors and members of Congress are to be chosen is not punishable under any statute now on the statute books of the United States. It is not a conspiracy to "defraud the United States" as defined by section 19 of the Criminal Code, nor is it a conspiracy to prevent or hinder the free exercise of any right or privilege secured by the Constitution or laws of the United States as defined in section 37 of the same code. This case does not in any way involve the question of the power of Congress to enact a statute which would effectively punish such bribery. The fact is that Congress has not done so. A review of the history of the two sections of the Criminal Code under which it was attempted to bring these indictments indicates that they were not intended to apply to bribery in elections. There are no common law crimes against the United States, and the United States can punish a man only when it has been able to show that he has committed an offense which falls clearly within the provisions of an act of Congress.

Elections—Right of Convict to be Candidate in State Primary. State v. Schmahl (Minnesota, May 17, 1918, 167 N. W. 481). An injunction was asked for to restrain the secretary of state from placing upon the primary election ballot the name of a man who, since filing his affidavit as a candidate, had been convicted of felony in a U. S. court and who was, therefore, disqualified from holding any office under the constitution of the state. The court refused to give the relief sought. The office of United States senator is a federal office and the qualifications for holding it are fixed by the federal Constitution. The fact that United States senators are elected by the state election machinery does not make applicable to the candidates for that office the restrictions upon the right to hold office found in the constitution of the state.

overnor—Power to Issue General Amnesty and Remit Civil Penalties. Hıton v. McClesky (Arkansas, February 11, 1918, 200 S. W. 1032). Inanuary, 1918, the governor of Arkansas issued a proclamation reduing to the sum of one dollar all penalties against delinquent taxpayers foithe year 1917. The supreme court held that in so doing the governr overstepped his constitutional power. This was true for two reons. In the first place, the power of the governor to pardon applies on to criminal cases and does not extend to the remission of penalties wlch are civil, remedial, or coercive in character. This clearly follows from the fact that the clause of the constitution defining the power of ardon stipulates that it be used "in all criminal and penal cases . . after conviction." Only those may be pardoned by the governr who have been duly convicted by a court of law. In the second plee, the proclamation was in excess of the governor's power because it mounted to a general amnesty. The constitutional provision alredy quoted indicates an intention to have the pardoning power used on in the case of individually convicted criminals and not for purposes of eneral amnesty; and the same intent is apparent in a further clause of he constitution providing that "no power of suspending or setting asie the law or laws of the state shall ever be exercised except by the Geeral Assembly."

inimum Wage—Constitutionality. Larsen v. Rice (Washington, Aril 3, 1918, 171 Pac. 1037). This is the fourth in an unbroken line of avorable state supreme court decisions upon the constitutionality of ninimum wage laws applicable to women and children. These las have all been substantially the same. The Washington statute of 913 created an industrial welfare commission which had power to inestigate the conditions in any industry in which women and minors wee employed and to issue a mandatory order regulating those conditios and fixing a minimum wage. In upholding this law the state supreme court merely cited with approval the opinion of the supreme cort of Oregon in the case of Stetler v. O'Hara (69 Ore. 519; 139 Pac. 74) without reviewing the arguments contained in that opinion.

lothers' Pensions—Constitutionality. Rumsey v. Saline County (Nbraska, March 16, 1918, 167 N. W. 66). The case upholds the vadity of the Nebraska mothers' pension act of 1915. Three objectios were urged against the constitutionality of the statute: first, that it ontained more than one subject; second, that, as an amendment to

the poor laws of the state, it should have repealed entirely the section which it was intended to amend; third, that it would necessitate an overstepping of the county tax limit set by the constitution. The court found no virtue in any of these contentions.

Naturalization—Grounds upon Which Certificates May be Canceled. United States v. Kamm (U. S. District Court, January 3, 1918, 247 Fed. 968). The defendants in this case had made their final application for naturalization before the date of the declaration of a state of war with Germany, but the statutory period of ninety days which must elapse between the application and the granting of final papers had not expired until after that date. The United States district court in which they had filed their petitions took the view, however, that the naturalization statute permitted their naturalization provided the applications were made before they became alien enemies. They were accordingly naturalized. The naturalization law provides that a United States district attorney may bring suit in any district in which a naturalized person resides to cancel his certificate of citizenship on the ground of fraud or on the ground that it was "illegally procured." Such an action to cancel the naturalization certificates of the defendants was brought on the ground that they were "illegally procured," inasmuch as the court which issued them had misinterpreted the statute and had issued the certificate when it had no authority to do so by reason of the fact that the defendants were alien enemies at the time of receiving their final papers. The question raised may be stated thus: Has one district court the power to cancel as being "illegally issued" the naturalization papers issued by another district court because the second court disagrees with the first upon the interpretation of the naturalization laws? The district court in this case holds that it does have this power. The decisions of the United States Supreme Court indicate that the words "illegally procured" are not to be construed in a narrow sense, but should be made to cover any irregularity or illegality which is apparent to the court regardless of the good motives of any or all of the parties involved.

Police Power—Sterilization of Defectives. Haynes v. Lapeer Circuit Judge (Michigan, March 28, 1918, 166 N. W. 938); In re Thomson (Supreme Court, Albany County, N. Y., March 5, 1918, 169 N. Y. Supp. 638). A Michigan statute of 1913 provided for the sterilization of persons confined in state institutions who had been adjudged mentally defective

or insane by a court of competent jurisdiction. There were adequate procedural requirements to prevent abuse of the power granted, and the operations were to be performed upon the approval of two qualified physicians. This act was held invalid on the ground that it violated the protection against the denial of the equal protection of the law, inasmuch as it applied only to such defectives as were confined in state institutions. Even the attorney general filed a brief attacking the law upon this ground. The court did not indicate what its attitude would have been toward a law providing for the sterilization of criminals and defectives which did not involve an arbitrary classification. In the case of In re Thomson practically the same issue was raised. The New York statute of 1912 was somewhat broader in scope than the Michigan act, but it also applied only to criminals and defectives in state institutions. The court regarded this classification as arbitrary and therefore a denial of due process of law. It furthermore regarded the whole scheme of the law as arbitrary and unjustifiable in character and a violation of due process of law. It reviewed with obvious approval the testimony of several physicians and scientists who for various reasons disapproved of the policy of sterilization of defectives and concluded that the proposed operation "is not justified either upon the facts as they today exist or in the hope of benefits to come." The court did not regard the law as a proper exercise of the police power.

Taxation—Public Purpose—Validity of Seed Grain Law.—State v. Wienrich (Montana, February 1, 1918, 170 Pac. 942). A suit for injunction was brought to restrain the holding of a county election to pass upon the issuance of $300,000 worth of bonds to be loaned to needy farmers in accordance with the provisions of the Montana seed grain law of 1915. Inasmuch as the amount of this proposed bond issue was in excess of the limit set by law the injunction was granted. The state supreme court took the opportunity, however, to examine carefully the question of the constitutionality of the seed grain law in its broader aspects. While, strictly speaking, the discussion of these constitutional questions may be regarded as *obiter dicta*, it seems clear that it was intended by the court to be an authoritative pronouncement upon those questions. The law was held to be constitutional. The statute provided for the loaning of money to "needy farmers who are unable to procure seed," and made such loans a lien upon the crops and land of the farmers who received them. This does not involve an exercise of the taxing power for a nonpublic purpose. The constitution

of the state permits the counties to provide for "those inhabitants, who, by reason of age, infirmity or other misfortune, may have claims upon the sympathy and aid of society." This is broad enough to include farmers who, by reason of the failure of their crops, are brought to the edge of ruin and who without help will become charges upon public charity. Loans of public money to such persons are for a public purpose. The conflicting view expressed by the supreme court of Kansas in 1875 (State v. Osawkee Township, 14 Kan. 418; 19 Am. Rep. 99) merely "shows how even mighty minds are circumscribed by the spirit of their time." The statute in the present case confined the benefits of the act to those needy farmers who were resident freeholders, and thereby raised the question of arbitrary discrimination against homesteaders and renters. On the theory that the court should so construe a law as to validate it if that can be done without violence to its language, the court held that both the tenant farmer and the homesteader could take advantage of the provisions of the law, such an interpretation being in harmony with its general purpose. This case is in harmony with decisions handed down by the supreme courts of North Dakota and Minnesota. See State v. Nelson County (1 N. D. 88; 45 N. W. 33) and Deering and Co. v. Peterson (75 Minn. 118; 77 N. W. 568).

War Problems. *Alien Enemies—Nonresident—License Under Trading With the Enemy Act.* Hungarian General Credit Bank v. Titus (New York, Appellate Division, April 5, 1918, 169 N. Y. Supp. 926). The plaintiff was a Hungarian corporation. It held the defendant's promissory note for $5000. In accordance with the provisions of the Trading With the Enemy Act the attorney for the plaintiff corporation applied to the alien property custodian and secured from him a license permitting the prosecution of an action to collect the note. It is here held that there is no authority in the statute for the issuance of such a license. The act provides that under certain conditions the President may authorize the licensing of nonresident alien enemies to carry on business in this country, and that such licensees may sue in any cause of action arising out of the business they are licensed to carry on. The plaintiff had no such license to do business in the United States and could not, therefore, be given a license to sue in the courts of this country. The action was accordingly stayed until the close of the war.